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7 OXNARD POLICE DEPARTMENT, JOHN CROMBACH,
and ANDREW SALINAS

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

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11 MARIA LAZOS, et al.,) No. CV 08-02987 RGK (SHx)
12 Plaintiffs,)
13 v.) [consolidated w/
14 CITY OF OXNARD, et al.,) No. CV 08-05153 RGK (SH)]
15 Defendants.)
16 _____) **DEFENDANTS' OPPOSITION TO**
17 AND CONSOLIDATED ACTION.) **PLAINTIFF MARIA LAZOS'S**
18 _____) **MOTION IN LIMINE NO. 11;**
19) **DECLARATION OF DEFENSE**
20) **COUNSEL**
21) Date : August 11, 2009
22) Time : 9:00 a.m.
23) Ctrm : 850 Roybal
24)
25)

Defendants hereby oppose plaintiff Maria Lazos's Motion in Limine No. 11 regarding exclusion of expert testimony as to Andrew Salinas's suffering from PTSD.

26 **I.**

27 **PLAINTIFF FAILED TO TIMELY MEET AND CONFER AS**
28 **REQUIRED BY LOCAL RULE 7-3**

Plaintiff failed to timely meet and confer. Pursuant to Local Rule 7-3, counsel contemplating the filing of any motion shall first contact opposing counsel to discuss thoroughly the substance

1 of the contemplated motion at least twenty (20) days prior to the
2 filing of the motion. Pursuant to the Court's standing orders,
3 motions in limine are to be filed and served a minimum of forty-
4 five (45) days prior to the scheduled trial date of August 11,
5 2009, which is June 27, 2009. Since June 27 is a Saturday, the
6 motion is to be filed by June 26. Based upon a June 26 filing
7 date, any meet and confer effort would have to be completed by
8 June 6, 2009 (twenty days prior). Plaintiff did not attempt to
9 meet and confer by identifying the anticipated motions in limine
10 until June 11, 2009 (Exhibit A). As such, the motion in limine is
11 untimely and should not be considered by the Court.

12 **II.**

13 **NO EXPERT TESTIMONY IS OFFERED TO BOLSTER**
14 **ANDREW SALINAS'S CREDIBILITY FOR PURPOSES OF**
15 **EXPLAINING HIS ALLEGED VARYING ACCOUNTS**

16 Plaintiff Lazos filed her motion to exclude opinions from
17 defendants' experts regarding the credibility and/or rationale for
18 differing accounts of the incident without advising the Court as to
19 what are the alleged differing accounts. The plaintiff is asking
20 the Court to decide the issue blind.

21 The case of *Westcott v. Crinklaw, et al.*, 68 F.3d 1073 (1995),
22 is not actually on point as plaintiff alleges. In this civil action
23 against a police officer for use of excessive force, the court held
24 that a defense expert's testimony that the officer suffered from
25 post-traumatic stress syndrome following the shooting of plain-
26 tiff's husband, **for purposes of explaining the officer's varying**
27 **accounts of the incident**, impermissibly bolstered the officer's
28 credibility, since reliability of the officer's statements was a

1 credibility issue which should have been left in the exclusive
2 province of the jury.

3 As indicated above, plaintiff failed to advise the Court of
4 Andrew Salinas's alleged different versions of what occurred. To
5 the defense's knowledge, there are no variances in Sgt. Salinas's
6 testimony as to what occurred. It is expected that Dr. Lewinski
7 will explain why police officers, when involved in high-stress
8 encounters such as the one facing Sgt. Salinas, often miss vast
9 quantities of information while they are scanning and focusing.
10 Several witnesses claim that they heard a voice say words to the
11 effect of "Don't shoot me" immediately prior to the gunshots;
12 however, Sgt. Salinas testified that he did not hear any such
13 statement. Sgt. Salinas has not offered varying accounts on this
14 issue, a significant distinction, and that is how this case differs
15 from *Westcott*.

16 Plaintiff will argue that having heard the statement,
17 Sgt. Salinas should have realized that the decedent did not pose a
18 threat to him and, as such, the force was not reasonable.
19 Dr. Lewinski's studies demonstrate why such a statement, if in fact
20 made, was not heard by Sgt. Salinas. The testimony is not offered
21 to bolster his credibility to counter varying accounts from the
22 same witness.

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For the foregoing reasons, it is respectfully requested that the Court deny plaintiff Maria Lazos's Motion in Limine No. 11.

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4 Dated: July _____, 2009

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LAW OFFICES OF ALAN E. WISOTSKY

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By:

DIRK DeGENNA

Attorneys for Defendants,

CITY OF OXNARD, OXNARD POLICE

DEPARTMENT, JOHN CROMBACH, and

ANDREW SALINAS

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DECLARATION OF DIRK DEGENNA

2 I, Dirk DeGenna, declare as follows:

3 1. I am an attorney admitted to practice law before all the
4 courts of the State of California and the United States District
5 Court, Central District of California, and am an associate in the
6 Law Offices of Alan E. Wisotsky, attorneys of record for defendants
7 in this action. I make this declaration of my own personal
8 knowledge, except as to the information declared on information and
9 belief, and if called upon to testify, I could and would do so
10 competently.

11 2. Plaintiffs' counsel did not make an effort to meet and
12 confer regarding potential motions in limine until June 11, 2009,
13 when by way of correspondence dated that same day, plaintiffs'
14 counsel identified 23 anticipated motions in limine.

15 3. Attached hereto as Exhibit A is a true and correct copy
16 of the June 11, 2009, correspondence.

I declare under penalty of perjury under the laws of the
United States of America that the foregoing is true and correct.

19 Executed on July , 2009, at Oxnard, California.

DIRK DEGENNA